IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.359 OF 2005

Sachin Jagdish Thorat .. Appellant
(Org. Plaintiff)

vs.

Kanubhai Chandubhai Patel
& Ors. .. Respondent.
(Org. Defendant)

Shri R.V.More for the Appellant.

CORAM : A.S.OKA, J.

DATED : 5th April, 2005.

P.C. :

1. Heard Shri More for the Appellant Plaintiff. The challenge in the suit filed by the Appellant Plaintiff is to the alienation made by his father in favour of Respondent No.1. There are various contentions raised in the suit. It is alleged that the sale is executed by the father without there being any legal necessity. it is also submitted that considering the tenure of the suit property, the father had no right to transfer the same.

2. Shri More, learned Counsel appearing for the Appellant invited my attention to the various

findings recorded by the trial Judge. He submitted that the application for temporary injunction is dismissed only on the ground that prayer for partition is not made. He submitted that the limited relief directing the Respondent No.1 not to create third party interest ought to have been granted by the trial Court.

3. In so far as maintainability of the suit is concerned, the finding recorded by the learned trial Judge is only a tentative finding for limited purpose of deciding application for interim relief. At the time of final hearing of the suit the learned Judge is bound to consider the said issue independently of what has been held in the impugned judgment and order.

4. The father of the Appellant has executed the transfer on accepting substantial amount from the Respondent No.1. Considering all the facts and circumstances of the case no fault can be found with the discretionary order passed by the trial Court. As substantive suit for declaration is pending, it is obvious that Section 52 of the Transfer of Property Act, 1882 will apply in the event any subsequent transfers are made by the Respondent

No.1.

5. Subject to the observations made above, the Appeal is dismissed with no order as to costs.

(A.S.Oka, J.)